

1 S.72

2 Introduced by Senator Campion

3 Referred to Committee on Finance

4 Date: February 7, 2017

5 Subject: Commerce and trade; consumer protection; telemarketing

6 Statement of purpose of bill as introduced: This bill proposes to require

7 telemarketers to provide accurate caller identification information.

8 An act relating to requiring telemarketers to provide accurate caller
9 identification information

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. 9 V.S.A. chapter 63, subchapter 1 is amended to read:

12 Subchapter 1: General Provisions

13 * * *

14 § 2464a. PROHIBITED TELEPHONE SOLICITATIONS

15 (a) Definitions. As used in this section, section 2464b, and section 2464c
16 of this title:

17 (1) “Customer” means a customer, residing or located in Vermont, of a
18 company providing telecommunications service as defined in 30 V.S.A.

19 § 203(5).

20 (2) “Caller identification information” means information a caller

1 identification service provides regard the name and number of the person
2 calling.

3 (3) “Caller identification service” means a service that allows a
4 subscriber of the service to have the telephone number, and where available,
5 the name of the calling party transmitted contemporaneously with the
6 telephone call and displayed on a device in or connected to the subscriber’s
7 telephone.

8 (4) “Federal functional regulator” means a federal functional regulator
9 as defined in 15 U.S.C. § 6809(2).

10 ~~(3)~~(5) “Financial institution” means a financial institution as defined in
11 15 U.S.C. § 6809(3).

12 (4)(6) “Tax-exempt organization” means an organization described in
13 Section 501(c) of the Internal Revenue Service Code (26 U.S.C. § 501(c)).

14 ~~(5)~~(7) “Telemarketer” means any telephone solicitor. However,
15 “telemarketer” does not include any telephone solicitor who is otherwise
16 registered or licensed with, or regulated or chartered by, the Secretary of State,
17 the Public Service Board, the Department of Financial Regulation, or the
18 Department of Taxes, or is a financial institution subject to regulations adopted
19 pursuant to 15 U.S.C. § 6804(a) by a federal functional regulator. Telephone
20 solicitors registered with the Department of Taxes to collect Vermont income
21 withholding, sales and use, or meals and rooms tax, but not registered with any

1 other agency listed in this subdivision, shall provide to the Secretary of State
2 an address and agent for the purpose of submitting to the jurisdiction of the
3 Vermont courts in any action brought for violations of this section.

4 ~~(6)~~(8) “Telephone solicitation”:

5 (A) means the solicitation by telephone of a customer for the purpose
6 of encouraging the customer to contribute to an organization ~~which~~ that is not
7 a tax-exempt organization, or to purchase, lease, or otherwise agree to pay
8 consideration for money, goods, or services; and

9 (B) does not include:

10 (i) telephone calls made in response to a request or inquiry by the
11 called customer;

12 (ii) telephone calls made by or on behalf of a tax-exempt
13 organization, an organization incorporated as a nonprofit organization with the
14 State of Vermont, or an organization in the process of applying for tax-exempt
15 status or nonprofit status;

16 (iii) telephone calls made by a person not regularly engaged in the
17 activities listed in subdivision (A) of this subdivision ~~(6)~~(8); or

18 (iv) telephone calls made to a person with whom the telephone
19 solicitor has an established business relationship.

20 ~~(7)~~(9) “Telephone solicitor” means any person placing telephone
21 solicitations, or hiring others, on an hourly, commission, or independent

1 contractor basis; to conduct telephone solicitations.

2 (b) Prohibition.

3 (1) No telemarketer shall make a telephone solicitation to a telephone
4 number in Vermont without having first registered in accordance with section
5 2464b of this title.

6 (2) No person shall make any telephone call to a telephone number in
7 Vermont ~~which~~ that violates the Federal Trade Commission's Do Not Call
8 Rule, 16 C.F.R. subdivision 310.4(b)(1)(iii), or the Federal Communication
9 Commission's Do Not Call Rule, 47 C.F.R. subdivision 64.1200(c)(2) and
10 subsection (d), as amended from time to time.

11 ~~(3) A telemarketer shall not cause a caller identification service to~~
12 ~~transmit misleading, inaccurate, or false caller identification information,~~
13 ~~provided that a telemarketer may substitute the name and telephone number of~~
14 ~~the person on whose behalf he or she places the call.~~

(3)(A) A telephone solicitor engaged in a telephone solicitation shall transmit, or cause to be transmitted, to a caller identification service in use by a consumer:

(i) the telephone solicitor's telephone number; and

(ii) if made available by the telephone solicitor's carrier, the telephone solicitor's name.

(B) Notwithstanding subdivision (3)(A) of this subsection, a telephone solicitor may substitute for its own name and number the name and the number, which is answered during regular business hours, of the person on whose behalf the telephone solicitor makes the telephone solicitation.

15 (c) Violation. A violation of this section shall constitute a violation of

1 section 2453 of this title. Each prohibited telephone call shall constitute a
2 separate violation. In considering a civil penalty for violations of subdivision
3 (b)(2) of this section, the court may consider, among other relevant factors, the
4 extent to which a telephone solicitor maintained and complied with procedures
5 designed to ensure compliance with the rules of the Federal Communications
6 Commission and the Federal Trade Commission.

7 (d) Criminal Penalties. A telemarketer who makes a telephone solicitation
8 in violation of subdivision (b)(1) of this section shall be imprisoned for not
9 more than 18 months or fined not more than \$10,000.00, or both. It shall be
10 an affirmative defense, for a telemarketer with five or fewer employees, that
11 the telemarketer did not know, and did not consciously avoid knowing, that
12 Vermont has a requirement of registration of telemarketers. Each telephone
13 call shall constitute a separate solicitation under this section. This section shall
14 not be construed to limit a person's liability under any other civil or
15 criminal law.

16 § 2464b. REGISTRATION OF TELEMARETERS

17 (a) Every telemarketer shall register with the Secretary of State, on a form
18 approved by the Secretary. In the case of a telemarketer who hires, whether on
19 an hourly, commission, or independent contractor basis, one or more persons
20 to conduct telephone solicitations, only the person who causes others to
21 conduct telephone solicitations need register. The Secretary of State may

1 adopt rules prescribing the manner in which registration under this section
2 shall be conducted, including a requirement of notice to the Secretary by the
3 telemarketer when the telemarketer ceases to do business in Vermont.

4 (b) The Secretary of State shall require that each telemarketer designate an
5 agent for the purpose of submitting to the jurisdiction of the Vermont courts in
6 any action brought for violations of section 2464a of this title.

7 (c) The Secretary of State shall collect the following fees when a document
8 described in this section is delivered to the Office of the Secretary of State for
9 filing:

10 (1) Registration: \$125.00.

11 (2) Statement of change of designated agent or designated office, or
12 both: \$25.00, not to exceed \$1,000.00 per filer per calendar year.

13 § 2464c. PRIVATECAUSE OF ACTION

14 Any person who receives a telephone call in violation of subsection
15 2464a(b) of this title may bring an action in Superior Court for damages,
16 injunctive relief, punitive damages in the case of a willful violation, and
17 reasonable costs and attorney's fees. The ~~Court~~ court may issue an award for
18 the person's actual damages or \$500.00 for a first violation, or \$1,000.00 for
19 each subsequent violation, whichever is greater. In considering the amount of
20 punitive damages, the ~~Court~~ court may consider, among other relevant factors,
21 the extent to which a telephone solicitor maintained and complied with

1 procedures designed to ensure compliance with the requirements of sections
2 2464a and 2464b of this title. This section shall not limit any other claims the
3 person may have under applicable law.

4 * * *

5 Sec. 2. EFFECTIVE DATE

6 This act shall take effect on July 1, 2017.